

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3036 OF 2007

Shetkari Shikshan Prasarak Mandal,
through the Secretary & anr. ... Petitioners

V/s

Pundalik Tukaram Gaikwad & ors. ... Respondents

Mr. R.S.Apte i/by Mr.N.R.Bubna for the petitioners.

Mr. Sandesh D. Patil for the respondent No.1.

Mr. R.M.Patne, A.G.P. for the State.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 28TH SEPTEMBER, 2007.

P.C.:

1. This petition challenges the order of the School Tribunal dated 6.7.2006. Surprisingly, the petitioners have not bothered to bring to the notice of this Court the order passed by the School Tribunal on 1.7.2006 when the Tribunal had indicated that the appeal was going to be allowed. It was at this stage the advocate for the management sought an adjournment to consult the management. The Tribunal has recorded that when the matter appeared on 6.7.2006 all that was argued, was

that the Tribunal had no jurisdiction to execute its own judgment. The Tribunal has considered the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short "M.E.P.S. Act") and has held that it has the jurisdiction to entertain the application filed under Section 11(3) and 14 of the Act.

2. The learned advocate for the petitioners submits that the Tribunal has not considered the pleadings on record which indicate that the employee i.e. the respondent No.1 herein had not reported for work despite the order of the School Tribunal dated 16.10.2003 setting aside the order of termination from service dated 13.6.2003. According to the learned advocate, the Tribunal has not considered the arguments advanced in this respect. However, there is no such statement made in the writ petition.

3. The order dated 1.7.2006 indicates that the School Tribunal was not inclined to accept the case of the petitioners and was going to allow the appeal. It was only at that stage that the School Tribunal adjourned the matter at the request of the advocate for the petitioners as he wanted to consult the management. On the next day of hearing it was argued that the Tribunal

had no jurisdiction to decide the application. It must be accepted that these facts are correct. However, neither in the order dated 1.7.2006 nor in the order dated 6.7.2006 is there any discussion about the pleadings on record.

4. Apart from this, the application filed by the respondent No.1 was for payment of back wages as directed by the School Tribunal. The Tribunal in the impugned order has directed payment of back wages from December, 1998 to 12.4.2006 which is clearly incorrect. It should have confined the period for payment of back wages from 13.6.2003 till the date when the respondent No.1 was reinstated in service i.e. 12.4.2006. Thus, that part of the order directing the payment of back wages from December, 1998 till 12.6.2003 is set aside. However, if the wages for this period are not paid, the respondent No.1 may take recourse to any legal remedy as is available to him. The fact that, by this order the direction of the School Tribunal to grant the wages from December 1998 to 12.6.2003 has been set aside, will not in any way be a hurdle for the respondent No.1 to claim wages from 1998 to 12.6.2003 if he is entitled to the same. In my view, the Tribunal after concluding that it had the jurisdiction to decide whether such an application could be granted, ought to have discussed

the pleadings on record and then decided whether the respondent No.1 is entitled to the relief claimed.

5. In my view, therefore, it would be appropriate to direct the School Tribunal to decide the application afresh on merits, in the light of the pleadings on record. This exercise will be carried out within a month from today. The amount deposited in this Court shall be transferred to the account of Contempt Application No. 24 of 2005 in the School Tribunal, Navi Mumbai.

6. Writ petition disposed of accordingly.

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